

(2011) 07 MAD CK 0152

In the Madras High Court

Case No : Writ Petition No. 9972 of 2007 and M.P. No. 1 of 2007

The Management of Coimbatore District Central Cooperative Bank Ltd. APPELLANT

Vs

The Presiding Officer, Labour Court and Others RESPONDENT

Date of Decision : 08-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 12(3), 2, 33C(2)

Citation : (2011) 07 MAD CK 0152

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : R. Parthiban, for the Appellant; R. Krishnasamy, for R2 to R18, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner is the Management of Coimbatore District Central Co-operative Bank Limited. They have come forward to

challenge the order passed by the Labour Court in various claim petitions filed by the contesting Respondents dated 05.05.2006.

2. The Labour Court in entertaining the claim made by the contesting Respondents filed u/s 33-C(2) of the Industrial Disputes Act, 1947 (for short

I.D. Act) computed various amounts due to the contesting Respondents in terms of the encashment of privileged leave salary. Aggrieved by the

said order, the writ petition came to be filed.

3. The writ petition was admitted on 16.03.2007. Pending the writ petition, this Court granted an interim stay.

4. On behalf of the contesting Respondents, the second Respondent has filed a counter affidavit dated 04.07.2008.

5. Since the Petitioner Bank had not filed the documents which were available before the Labour Court, this Court directed the original records to be circulated for perusal by this Court. Accordingly, the Registry has circulated the entire original records relating to all the claim petitions and perused by this Court.

6. It is seen from the records that the contesting Respondents filed separate claim petitions u/s 33-C(2) of the I.D. Act claiming encashment of unearned leave on private affairs with a maximum of 90 days to which they are entitled for full salary. The claim was based upon a settlement signed u/s 12(3) of the I.D. Act dated 30.03.1979. Under Clause 38 of the said settlement, the Management and the Union have agreed that the grant of unearned leave to employees will be regulated with reference to the Rules in force in the case of Tamil Nadu State Government Employees, after following procedure.

7. Before the Labour Court, all the claim petitions were grouped together and a joint trial was conducted and common evidence was let in. On behalf of the contesting Respondents, 11 documents were filed and marked as Exs.W.1 to W.11. On the side of the Petitioner Bank, 89 documents were filed and marked as Exs.M.1 to M.89. The Petitioner Bank also examined one Subramanian, who was working as a Manager - Administration as M.W.1.

8. It is on the basis of the evidence (both oral and documentary), the Labour Court computed various amounts and upheld the claim of the contesting Respondents in claiming encashment of the unearned leave on private affairs up to 90 days.

9. Mr. R. Parthiban, learned Counsel for the Petitioner assailing the order made the following contentions:

The first contention was that excepting the Respondent S. Shanmugam covered by C.P. No. 195 of 2005, all other persons were either Assistant Managers or Managers and they are not workmen within the meaning of Section 2(s) of the I.D. Act. Therefore, the petition filed by them u/s 33-C(2) of the I.D. Act is not maintainable.

10. The second contention made by the learned Counsel for the Petitioner was that pursuant to the settlement, the Board had passed a resolution for giving effect to the provisions and proposals were sent for amending the

special by-laws. Though the special by-laws were approved, subsequently, the Board wanted to amend the by-laws and withdrew the same. Therefore, there is no pre-existing right on the part of the Respondents to claim the amount.

11. The third contention was that in the absence of any special by-laws in favour of the workmen, reliance placed upon the settlement is misconceived.

12. With reference to the contention regarding the pre-existing right of the workmen, it is seen from the records that the contesting Respondents

have filed Ex.W.1, which is 12(3) settlement signed between the Management and the Union. As noted already, under Clause 38, it was agreed

that the grant of unearned leave to employees will be regulated as per the Government Rules in force. In support of the Government Rules, the

Respondents have also filed Ex.W2, which is the order of the State Government in G.O. Ms. No. 488, Finance (Pension) Department, dated

12.08.1996. Under the said order, in Para 2(a) it was stated that at the time of retirement, 50% of the leave on private affairs standing to the credit

of the employees, up to a maximum of 90 days, be entitled for full leave salary. Therefore, in the light of Ex.W1 read along with Ex.W2, the

employees are having pre-existing right to encash the unearned leave on private affairs up to a maximum of 90 days. It is immaterial that the by-

laws which were sought to be framed by the Board with effect from 01.07.1996 was sought to be cancelled by them subsequently in the absence

of any approval. So long as the settlement is valid and binding on the parties, the workers can act upon the said settlement. In the present case, the

settlement itself do not provide any firm commitment by the employer; on the other hand, the Government leave rules with reference to encashment

had been directly incorporated and therefore, the moment the Government had issued an order in this regard, it becomes part of the right under the

said settlement and hence, such contention to the contrary has to be rejected.

13. With reference to the contention that except S. Shanmugam, covered by C.P. No. 195 of 2005, others employees are Managers and

Assistant Managers, in normal circumstances, one can presume that they are not workmen within the meaning of Section 2(s) of the I.D. Act. But

on the other hand, in the present case, it is witnessed for the management who

got into the box and in his cross examination, he had stated that the settlement applies to all the employees of the Bank and he had also further stated that the settlement Ex.W1 applies to General Managers and Deputy Managers. Therefore, having agreed that the settlement applies to all, the Petitioner Bank cannot discriminate between the other Respondents and the workmen within the meaning of Section 2(s) of the I.D. Act. Even otherwise, the Supreme Court has held that it is not the nomenclature, but the actual work performed by an individual will be the deciding factor to consider the question whether a person is an employee or not.

14. In the cross examination, M.W.1 had admitted that the Respondents do not have the power of signing cheques; they do not have power to take disciplinary action against the subordinates; they are not entitled to enter into any settlement on behalf of the Bank and they cannot sue on behalf of the Bank. Though they are entitled to grant ordinary leave viz., casual leave, with reference to other leave, they have only power to make recommendation. They are considered as Managers only for name sake, but in essence, they are doing the clerical work for the Bank. These admissions of M.W.1 stands unimpeached.

15. It is legitimate for the Labour Court to presume that they are workmen within the meaning of Section 2(s) of the I.D. Act and on such finding of fact, this Court is not inclined to disturb the order of the Labour Court in a petition under Article 226 of the Constitution. Even otherwise, if the claim relating to S. Shanmugam, Petitioner in C.P. No. 195 of 2005, who is 17th Respondent in this writ petition is to become final, by the same logic, the Petitioner will have to extend the same benefit to other persons whether they are Managers or workmen. Therefore, the Petitioner Bank cannot make a distinction in the matter of leave between various categories of staff. Once the claim of S. Shanmugam is upheld, then it becomes part of the service condition of the employees of the bank. Therefore, it is unnecessary to interfere with the impugned order. Under the circumstances, there is no case made out to interfere with the impugned order.

16. Accordingly, the writ petition stands dismissed. However, there will no order as to costs. Consequently, connected miscellaneous petition is closed.